

RAIL MERGER BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
the Environment, Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting "the Secretary for the Environment, Transport and Works" and substituting "the Secretary within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556)".
Part 2	In Division 1, in the heading, in the Chinese text, by adding "詳題及" after "修訂".
3	Paragraph (c) is deleted.
3(d)(i)	In the English text, by adding "at the end" after "comma".
5(c)	In the Chinese text, in the proposed definition of "鐵路", in paragraph (a), by adding "各" before "九鐵公司鐵路".

ALL PASSED

- 5(d) In the proposed definition of "railway premises", in paragraph (a) -
- (a) in subparagraph (i), by adding "and" after the semicolon;
 - (b) by deleting subparagraph (ii);
 - (c) in subparagraph (iii), by deleting "or (ii)".
- 5(e) (a) By deleting the proposed definition of "Concession Period" and substituting -
- "Concession Period" (經營權有效期) means the period for which that part of the franchise relating to the KCRC Railways is in force, and any period for which the whole or any part of such part of the franchise is suspended under this Ordinance;".
- (b) In the English text, in the proposed definition of "service concession", by deleting the comma before "and".
 - (c) In the Chinese text, in the proposed definition of "九鐵公司鐵路", by adding "各" before "九鐵公司鐵路的提述".

ALL PASSED

(d) In the Chinese text, in the proposed definition of "西北鐵路巴士服務", by deleting "營運" and substituting "經營".

(e) In the Chinese text, in the proposed definition of "經營權財產", by deleting paragraph (b) and substituting -

"(b) 為供港鐵公司使用而獲取、購買、租用、生產、創造、建造、發展、加工處理或改裝，並只用於修理、維修、更換或改善(a)段提述的財產，且屬服務經營權協議中 "Concession Property" 的定義所指的財產；及".

6(a) In the proposed section 4(1)(e), in the Chinese text, by adding "各" before "九鐵公司鐵路".

6(b) In the proposed section 4(1A), in the Chinese text, by deleting "或" and substituting "及".

8(b) By deleting the proposed section 9(2) and substituting -
"(2) Where the Corporation operates the TSA bus service during the Concession Period, the Corporation shall ensure that the TSA bus service is operated properly and efficiently under -

ALL PASSED

- (a) this Ordinance and all other applicable laws; and
- (b) the operating agreement."

- 9 (a) By deleting the proposed section 12A(2)(b) and substituting -
- "(b) in respect of any matter in relation to which any person whose right to occupy the land has been prejudiced has made no objection or claim during the time of the construction of that part of the KCRC Railway affecting that land or in relation to which that person has accepted compensation; or".
- (b) In the proposed section 12A(2)(c), in the Chinese text, by adding "的" before "作為".
- 10 By adding "operated by the Corporation" after "service".
- 11 (a) In the proposed section 15A(2), in the Chinese text, by deleting "經營".
- (b) In the Chinese text, by deleting the proposed section 15A(3)(a) and substituting -

ALL PASSED

"(a) 凡在與該部分的專營權被暫時中止有關連的情況下，根據第15(5)條被接管的經營權財產蒙受任何損失或損壞(但為免生疑問，不包括使用或管有該經營權財產的權利的損失)，政府有法律責任就該等損失或損壞支付補償；及".

(c) By deleting the proposed section 15A(3)(b) and substituting -

"(b) subject to paragraph (a), the Government is not liable to pay compensation for any loss or damage of any other kind (including consequential loss) sustained by the Corporation and in any way arising from or attributable to the suspension of that part of the franchise.".

(d) In the Chinese text, by deleting the proposed section 15A(4)(a) and substituting -

"(a) 在與該部分的專營權被暫時中止有關連的情況下，根據第15(5)條被接管的經營權財產蒙受任何損失或損壞(為免生疑問，包括使用或管有該經營權財產的權利的損失)；及".

ALL PASSED

- (e) By deleting the proposed section 15A(4)(b) and substituting -
- "(b) any actual loss or damage of any other kind (but excluding, for the avoidance of doubt, any consequential loss) sustained by the Corporation and resulting directly from or attributable to the suspension of that part of the franchise."
- (f) In the proposed section 15A(5), in the Chinese text -
- (i) by adding "就該損失、損壞或損害" before "而支付，";
- (ii) by deleting "首述的" and substituting "該".
- (g) In the proposed section 15B(1), in the Chinese text -
- (i) by deleting "有關";
- (ii) by deleting "該等使用" and substituting "將該等財產用於經營該等服務";
- (iii) by adding "經營" before "該等服務。".

ALL PASSED

(h) In the proposed section 15B(2), in the Chinese text -

- (i) by deleting "有關";
- (ii) by deleting "該等使用" and substituting "將該等財產用於經營該等服務";
- (iii) by adding "經營" before "該等服務".

12(e) In the proposed section 16(2) -

- (a) in paragraph (c), by deleting the comma and substituting a full stop;
- (b) by deleting everything after paragraph (c).

14(4) In the proposed section 18(8A), in the Chinese text, by adding "各" before "九鐵公司鐵路".

15 (a) In the proposed section 19A(2), in the Chinese text -

- (i) by deleting "關乎經營" and substituting "關乎各";
- (ii) by deleting "有關".

ALL PASSED

(b) In the proposed section 19C(1), in the Chinese text -

(i) by adding "各" before "九鐵公司鐵路";

(ii) by deleting "該等使用" and substituting "將該等港鐵共用財產用於經營該等服務".

(c) In the proposed section 19C(2), in the Chinese text -

(i) by adding "各" before "九鐵公司鐵路";

(ii) by deleting "該等使用" and substituting "將該等九鐵共用財產用於經營地下鐵路".

(d) In the proposed section 19C(3) (a) and (b), in the Chinese text, by adding "各" before "九鐵公司鐵路的部分".

16 By adding before subclause (1) -

"(1A) Section 33(1)(a)(ii) is repealed.".

16(1) (a) In the proposed section 33(1A), by deleting "all or any" and substituting "any or all".

(b) By deleting the proposed section 33(1A)(b) and substituting -

ALL PASSED

"(b) controlling and regulating the maintenance and operation of the TSA bus service by the Corporation; and".

(c) By deleting the proposed section 33(1A)(c).

(d) In the proposed section 33(1B), in the Chinese text, by adding "各" before "九鐵公司鐵路".

17 (a) By deleting the proposed section 34(1A)(a) and substituting -

"(a) prescribing the terms upon which any goods or class of goods will be received for carriage by the Corporation or stored by it including limitations on the liability of the Corporation in respect of the goods; and".

(b) In the proposed section 34(1B), in the Chinese text, by adding "各" before "九鐵公司鐵路".

18 In the proposed section 35(6)(b), in the Chinese text, by adding "各" before "九鐵公司鐵路".

ALL PASSED

New

By adding immediately after clause 18 -

"Division 5A - Amendments to Part IX (Vesting provisions and transitional arrangements)

18A. Interpretation

Section 36 is amended by adding -

"(3) In this Part, "Corporation" (地鐵公司) means the company -

- (a) which, as at the appointed day, is incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name "MTR Corporation Limited" in English and "地鐵有限公司" in Chinese; and
- (b) the Chinese name of which is changed to "香港鐵路有限公司" on the Merger Date under section 66(1)."."

19

(a) In the proposed section 52A -

(i) in the definition of "relevant date" -

ALL PASSED

- (A) in paragraphs (a) and (b), by deleting "which is" and substituting "or a contract of a class of contracts";
 - (B) in paragraph (d), in the Chinese text, by deleting "與";
 - (ii) in the Chinese text, in the definition of "合約", by deleting "的協議、債券" and substituting "或作出的協議、保證".
- (b) By deleting the proposed section 52B(1)(a) and (b) and substituting -
- "(a) the rights which are exercisable by KCRC at any time on or after the relevant date under the terms of the contract or a contract of the class of contracts; and
 - (b) the liabilities which are to be discharged by KCRC at any time on or after the relevant date under the terms of the contract or a contract of the class of contracts,".
- (c) In the proposed section 52B, by adding -

ALL PASSED

"(1A) Where a right is exercisable by KCRC before, on and after the relevant date under the terms of a contract or a contract of a class of contracts specified in a Vesting Notice, subsection (1) does not apply to the right which is exercisable by KCRC in respect of the period before the relevant date."

(d) In the proposed section 52C, in the heading, in the Chinese text, by deleting "及合約" and substituting "及".

(e) By deleting the proposed section 52C(1)(a) and (b) and substituting -

"(a) the rights which are exercisable by the Corporation at any time on or after the relevant date under the terms of the contract or a contract of the class of contracts; and

(b) the liabilities which are to be discharged by the Corporation at any time on or after the relevant date under the terms of the contract or a contract of the class of contracts,".

(f) In the proposed section 52C, by adding -

ALL PASSED

"(1A) Where a right is exercisable by the Corporation before, on and after the relevant date under the terms of a contract or a contract of a class of contracts specified in a Re-vesting Notice, subsection (1) does not apply to the right which is exercisable by the Corporation in respect of the period before the relevant date."

- (g) In the proposed section 52C(2) (b), in the Chinese text, by adding "各" before "九鐵公司鐵路".
- (h) In the proposed section 52D(1), in the Chinese text, by deleting "由" and substituting "與".
- (i) By deleting the proposed section 52E and substituting -

"52E. Pension fund schemes, etc.

(1) All rights and liabilities to which KCRC was entitled or subject immediately before the relevant date under any specified instrument shall vest in the Corporation by virtue of this subsection on that date.

(2) In subsection (1), "specified instrument" (指明文書) means any contract or other document -

ALL PASSED

(a) which -

(i) constitutes or relates to any pension fund scheme, provident fund scheme or any other retirement benefits scheme established for the benefit of employees of KCRC; or

(ii) relates to any gratuity benefits payable by KCRC; and

(b) which was in force immediately before the relevant date."

- (j) In the proposed section 52F(1), by adding "as from that date" after "(as the case may require)".
- (k) In the proposed section 52F(3), by adding "as from that date" after "(as the case may require)".
- (l) In the proposed section 52G(5), in the Chinese text, by deleting everything after "而言，" and substituting "港鐵公司及所有其他人為確定、完成或強制執行該項轉歸的權利或法律責任而具有的權利、權力及補救方法，與假使該項權利或法律責任在所有時候均屬港鐵公司

ALL PASSED

的權利或法律責任，港鐵公司及上述其他人便會具有的權利、權力及補救方法相同。".

- (m) In the proposed section 52G(6), in the Chinese text, by deleting everything after "而言，" and substituting "九鐵公司及所有其他人為確定、完成或強制執行該項轉歸的權利或法律責任而具有的權利、權力及補救方法，與假使該項權利或法律責任在所有時候均屬九鐵公司的權利或法律責任，九鐵公司及上述其他人便會具有的權利、權力及補救方法相同。".
- (n) In the proposed section 52H(1), in the English text, by adding "effected" after "other than any vesting".
- (o) In the proposed section 52H(2) and (3), in the English text, by adding "effected" after "any vesting".
- (p) In the proposed section 52J(1), in the Chinese text, by deleting "及法律責任" and substituting "或法律責任".
- (q) In the proposed section 52J(2), in the Chinese text, by deleting "及法律責任" and substituting "或法律責任".
- (r) In the proposed section 52L(1), by deleting "desirable" and substituting "reasonable".

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21

(a) By adding before the proposed section 54A -

**"54AA. Disapplication of section 54(1)
during Concession Period**

During the Concession Period, section 54(1) (insofar as it relates to sections 3 and 4 of Schedule 2) does not apply in relation to any part of the franchise relating to the KCRC Railways."

(b) In the proposed section 54A, in the heading, by adding **"during Concession Period"** after **"Ordinance"**.

(c) In the proposed section 54B, in the heading, by adding **"during Concession Period"** after **"service"**.

(d) In the proposed section 54B(3), in the Chinese text, by deleting "的資料" and substituting "的資料的意向".

(e) In the proposed section 54B(4)(b), in the Chinese text, by deleting "營運" and substituting "經營".

(f) In the proposed section 54B(5), in the Chinese text, by deleting "調查" and substituting "檢查".

(g) In the proposed section 54B, by adding -

"(6) In this section, "TSA bus service" (西北鐵路巴士服務) means the service provided through the operation of bus services within the North-west Transit Service Area by the Corporation."

ALL PASSED

New

By adding immediately after clause 21 -

"21A. Securities of Corporation as authorized investment

Section 59 is amended by adding -

"(3) In this section, "Corporation" (地鐵公司) means the company -

- (a) which, as at the appointed day, is incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name "MTR Corporation Limited" in English and "地鐵有限公司" in Chinese; and
- (b) the Chinese name of which is changed to "香港鐵路有限公司" on the Merger Date under section 66(1)."

21B. Requirement for Secretary to consult Corporation

Section 61 is amended -

ALL PASSED

- (a) in the heading, by adding ", etc." after "Secretary";
- (b) by adding ", the Commissioner or any other person ("the first-mentioned person")" before "to consult";
- (c) by repealing "in relation to any matter does not oblige the Secretary" and substituting "("the second-mentioned person") in relation to any matter does not oblige the Secretary, the Commissioner or the first-mentioned person (as the case may be)";
- (d) by repealing "that other person" and substituting "the second-mentioned person".

21C. Section added

The following is added -

"66. Change of Chinese name

(1) On the Merger Date, the Chinese name of the Corporation is changed from "地鐵有限公司" to "香港鐵路有限公司".

ALL PASSED

(2) The Corporation shall, as soon as practicable after the Merger Date, deliver to the Registrar a copy of this Ordinance as amended by the Rail Merger Ordinance (of 2007) and published in the loose-leaf edition of the laws published under the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990).

(3) The Registrar shall register the copy of the Ordinance delivered to him pursuant to subsection (2) and -

(a) enter the new Chinese name of the Corporation in the register in place of its former Chinese name; and

(b) issue to the Corporation a certificate of change of name in respect of the change of the Chinese name of the Corporation under subsection (1).

(4) The change of the Chinese name of the Corporation under this section does not affect any rights or obligations of the Corporation or render defective any legal proceedings by or against it and any legal proceedings that could

ALL PASSED

have been commenced or continued against it by its former Chinese name may be commenced or continued against it by its new Chinese name.

(5) Section 22 of the Companies Ordinance (Cap. 32) does not apply in respect of the change of the Chinese name of the Corporation under this section.

(6) Nothing in this section shall be construed to affect the operation of section 22 of the Companies Ordinance (Cap. 32) in respect of any subsequent change of name of the Corporation.

(7) In this section, "Registrar" (註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32).".".

22 By deleting paragraph (b) and substituting -

"(b) by adding "to enable that corporation to dispose of its property to, or grant its rights over its property and its other rights to, the MTR Corporation Limited, to enable that corporation to own or take a lease of other railways," after "other railways,".".".

ALL PASSED

- 23(1)(c) (a) By deleting the proposed definition of "Concession Period" and substituting -
- "Concession Period" (經營權有效期) means the period for which that part of the franchise relating to the railways granted under section 4 of the Mass Transit Railway Ordinance (Cap. 556) is in force, and any period for which the whole or any part of such part of the franchise is suspended under that Ordinance;"
- (b) By deleting the proposed definition of "service concession" and substituting -
- "service concession" (服務經營權) means an arrangement under which the rights of the Corporation to have access to, use or possess certain railways and certain other property for the operation of those railways or the operation of bus services within the North-west Transit Service Area, are granted to the MTR Corporation Limited;"
- (c) In the English text, in the proposed definition of "Service Concession Agreement", by deleting the semicolon and substituting a full stop.

ALL PASSED

- (d) By deleting the proposed definition of "TSA bus service".
- 25 (b) (a) In the proposed section 4(8), in the Chinese text, by adding "有關" after "涵蓋的".
- (b) In the proposed section 4(9), in the Chinese text, by deleting "建造工程" where it twice appears and substituting "建造".
- (c) In the proposed section 4(9), in the Chinese text, by deleting "該工程" and substituting "該鐵路的建造".
- (d) In the proposed section 4(9)(a), in the Chinese text, by deleting "該工程" and substituting "該鐵路的建造".
- (e) In the proposed section 4(9)(b), in the Chinese text, by deleting "管有或使用" and substituting "使用或管有".
- 28 (a) In the proposed Part VIII, in the heading, in the English text, by adding "OPERATION OF" after "SUSPENSION OF".

ALL PASSED

- (b) By deleting the proposed section 40(1) and substituting -

"(1) The operation of the following is suspended during the Concession Period -

- (a) Part IV and sections 25 and 38;
- (b) sections 23, 34B and 35A; and
- (c) the Kowloon-Canton Railway Corporation (Permitted Activities) (Consolidation) Order (Cap. 372 sub. leg. D)."

- (c) By deleting the proposed section 40(2) and substituting -

"(2) Subsection (1)(a) does not apply where the franchise granted to the MTR Corporation Limited under section 4 of the Mass Transit Railway Ordinance (Cap. 556), or any part of it relating to those railways covered by a service concession, is suspended under that Ordinance."

New

By adding immediately after clause 29 -

"29A. Second Schedule amended

ALL PASSED

The Second Schedule is amended, in paragraphs 3 and 4, by repealing "Corporation to operate" and substituting "operation of".

29B. Fifth Schedule amended

The Fifth Schedule is amended -

- (a) in paragraph 2(b), in the English text, by repealing "Corporation to operate" and substituting "operation of";
- (b) in paragraph 3(a), by repealing "Corporation to construct and maintain" and substituting "construction and maintenance of".

30(2) By deleting paragraphs (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn) and (zt).

30(3) By deleting paragraphs (e) and (i).

ALL PASSED

- Schedule 1 (a) In section 1, in the Chinese text, by deleting "而經營" and substituting "而運作".
- (b) In section 3, in the proposed section 104E(1)(b), in the Chinese text, by adding "在經營權有效期內" before "有權接觸".
- (c) By deleting "**Traffic Accident Victims (Assistance Fund) Ordinance**" and substituting -

"Eastern Harbour Crossing Ordinance

3A. Interpretation

Section 2 of the Eastern Harbour Crossing Ordinance (Cap. 215) is amended -

- (a) in subsection (1), by repealing the definitions of "Mass Transit Railway Corporation" and "Corporation";
- (b) by repealing subsection (5).

3B. Section added

The following is added -

**"2A. Interpretation: references to
"Mass Transit Railway
Corporation" and
"Corporation"**

ALL PASSED

(1) In relation to any time before the appointed day, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires, a reference to "Mass Transit Railway Corporation" or "Corporation" is a reference to the Mass Transit Railway Corporation established by section 3(1) of the Mass Transit Railway Corporation Ordinance (Cap. 270) that was repealed by section 64(1) of the Mass Transit Railway Ordinance (Cap. 556).

(2) In relation to any time on or after the appointed day, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires -

- (a) a reference to "Mass Transit Railway Corporation" or "Corporation" is a reference to "MTRCL"; and

ALL PASSED

(b) a reference to "Mass Transit Railway Corporation Ordinance (Cap. 270)" or a provision of the Mass Transit Railway Corporation Ordinance (Cap. 270) is a reference to "Mass Transit Railway Ordinance (Cap. 556)" or the provision to the corresponding effect in the Mass Transit Railway Ordinance (Cap. 556).

(3) In relation to any time on or after the appointed day but before the Merger Date, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires -

(a) a reference to "地下鐵路公司" is a reference to "地鐵有限公司";
and

ALL PASSED

(b) a reference to "《地下鐵路公司條例》(第270章)" or a provision of 《地下鐵路公司條例》(第270章) is a reference to "《地下鐵路條例》" or the provision to the corresponding effect in 《地下鐵路條例》.

(4) In relation to any time on or after the Merger Date, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires -

- (a) a reference to "地下鐵路公司" is a reference to "港鐵公司"; and
- (b) a reference to "《地下鐵路公司條例》(第270章)" or a provision of 《地下鐵路公司條例》(第270章) is a reference to "《香港鐵路條例》(第556章)" or the provision to the corresponding

ALL PASSED

effect in 《香港鐵路條例》 (第
556章) .

(5) In this section -

"appointed day" (指定日期) has the same meaning
as in section 2(1) of the Mass Transit
Railway Ordinance (Cap. 556);

"Merger Date" (合併日期) has the same meaning as
in section 2(1) of the Mass Transit Railway
Ordinance (Cap. 556);

"MTRCL" means the MTR Corporation Limited as
defined in section 2(1) of the Mass Transit
Railway Ordinance (Cap. 556);

"《地下鐵路條例》" was the Chinese short title
of the Mass Transit Railway Ordinance (Cap.
556) immediately before the Merger Date;

"地鐵有限公司" was the Chinese name of MTRCL
immediately before the Merger Date;

"港鐵公司" has the same meaning as in section
2(1) of the Mass Transit Railway Ordinance
(Cap. 556).".

**Traffic Accident Victims (Assistance
Fund) Ordinance".**

ALL PASSED

- (d) In section 10(1)(a), in the Chinese text, in the proposed definition of "輕鐵站", in paragraph (b), by deleting "指根據《九廣鐵路公司規例》(第372章, 附屬法例A)指定的" and substituting "指在《九廣鐵路公司規例》(第372章, 附屬法例A)所指的指定".

- Schedule 2 (a) In Part 1, by deleting section 3.
- (b) In Part 2, by deleting section 4 and substituting -
"4. Item 1 of Part 1 of Schedule 1 to the Banking (Capital) Rules (Cap. 155 sub. leg. L).
4A. Section 2(a) of the Banking (Specification of Public Sector Entity in Hong Kong) Notice (Cap. 155 sub. leg. O).".
- (c) In Part 2, by deleting section 6.

ALL PASSED